

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 24, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP2163

Cir. Ct. No. 2016SC282

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

TEAM PROPERTY MANAGEMENT LLC A/K/A TPM, LLC,

PLAINTIFF-APPELLANT,

V.

BRIAN REISS AND HOLLY REISS,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Ozaukee County:
PAUL V. MALLOY, Judge. *Reversed and cause remanded.*

¶1 REILLY, P.J.¹ This appeal addresses time limits for requesting de novo review of a money judgment in a WIS. STAT. ch. 799 small claims action. Team Property Management LLC (Team) was initially granted a money judgment in the amount of \$6879.50 against Brian and Holly Reiss (Reiss) by a circuit court commissioner. Reiss requested de novo review fourteen days later. Team moved the court to deny de novo review on the grounds that a request must be made within ten days of a court commissioner's oral grant of the judgment under WIS. STAT. § 799.207(2)(b). Reiss argued their request was timely under WIS. STAT. § 801.15(1)(b),² which excludes all Saturdays, Sundays and holidays from the time computation. The circuit court granted de novo review, found for Team, and awarded \$5250.50. As we conclude that § 801.15 does not apply in a ch. 799 proceeding, Reiss's appeal for de novo review was not timely, and we reverse and remand for the circuit court to affirm the judgment issued by the circuit court commissioner.³

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² WISCONSIN STAT. § 801.15(1)(b), which controls time limits in civil actions, provides:

[I]n computing any period of time prescribed or allowed by chs. 801 to 847, by any other statute governing actions and special proceedings, or by order of court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a day the clerk of courts office is closed. When the period of time prescribed or allowed is less than 11 days, Saturdays, Sundays and holidays shall be excluded in the computation.

³ Team requests that we affirm the judgment entered by the circuit court commissioner on August 17, 2016; however, we cannot review a decision of a circuit court commissioner as the decision "is not the equivalent of a final order or judgment of a circuit court." *Dane Cty. v. C.M.B.*, 165 Wis. 2d 703, 708, 478 N.W.2d 385 (1992).

¶2 We review issues of statutory interpretation de novo. *State v. Setagord*, 211 Wis. 2d 397, 405-06, 565 N.W.2d 506 (1997). WISCONSIN STAT. ch. 799 governs procedure in small claims actions and, pursuant to WIS. STAT. § 799.01(1), “the procedure in this chapter is the exclusive procedure to be used in circuit court in” actions “where the amount claimed is \$10,000 or less, if the actions” are “[f]or money judgments.” Sec. 799.01(1)(d)1. WISCONSIN STAT. § 799.207 governs proceedings before court commissioners. Under § 799.207(2)(b), the circuit court commissioner’s oral decision “shall become a judgment 11 days after rendering” except that “[e]ither party may file a demand for trial within 10 days from the date of an oral decision ... to prevent the entry of the judgment.” Absent a timely demand, the commissioner’s decision becomes final and the opportunity for a new trial before the circuit court is lost.

¶3 WISCONSIN STAT. § 801.01(2) provides that “Chapters 801 to 847 govern procedure and practice in circuit courts of this state in all civil actions and special proceedings ... except where different procedure is prescribed by statute or rule.” WISCONSIN STAT. § 799.207(2)(b) prescribes the procedure to be exclusively applied in this case. We conclude that WIS. STAT. § 801.15(1)(b) does not apply to calculation of time under § 799.207(2)(b). See *Hoeller v. Kula*, No. 2014AP2859, unpublished slip op. ¶7 (WI App July 15, 2015).⁴ As Reiss’s demand for a trial was filed fourteen days after the circuit court commissioner issued its oral decision, we conclude that the request was untimely and the circuit court improvidently granted Reiss’s trial demand. We therefore reverse and remand for proceedings consistent with this decision.

⁴ We cite to *Hoeller v. Kula*, No. 2014AP2859, unpublished slip op. ¶7 (WI App July 15, 2015), for persuasive value under WIS. STAT. RULE 809.23(3)(b).

¶4 Team also requests costs against Reiss for what they call a “frivolous claim.” As Team failed to provide this court with transcripts from the circuit court proceedings in this case, we cannot reach the issue of whether this appeal was frivolous. *See State v. Dietzen*, 164 Wis. 2d 205, 212, 474 N.W.2d 753 (Ct. App. 1991) (appellant responsible for assembling and submitting record). No costs to either party.

By the Court.—Judgment reversed and cause remanded.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

